



**THE ATTORNEY GENERAL
OF TEXAS**

**WAGGONER CARR
ATTORNEY GENERAL**

AUSTIN 11, TEXAS

March 11, 1965

Honorable John B. Connally
Governor of Texas
Austin, Texas

Opinion No. C-400

Re: Whether the control and
administration of Arlington
State College may be trans-
ferred from the Texas A&M
University System to The
University of Texas System
by Legislative Act.

Dear Governor Connally:

Your request for an opinion poses the following question:
". . . may the control and administration of Arlington State Col-
lege be transferred from the Texas A&M University System to The
University of Texas System by Legislative Act?"

Arlington State College was established by the provisions
of Chapter 97, Acts of the 35th Legislature, Regular Session, 1917.
Sections 1, 2, 6 and 7 of the 1917 Act provided:

"Section 1. That there is hereby establish-
ed a Junior Agricultural, Mechanical and Indus-
trial College, to be known as the Grubbs Vocation-
al College, to be located at or near the town of
Arlington, Tarrant County, Texas, provided the
citizens of said town and county shall first do-
nate to the State for the use and benefit of said
college at least one hundred acres of good tillable
land with perfect title, together with the college
property, known as the Carlisle Military School
property, with all buildings, dormitories, barracks,
etc., belonging thereto.

"Sec. 2. Be it further enacted that said
Junior Agricultural, Mechanical and Industrial Col-
lege shall be under the direction of the board of
directors of the present Agricultural and Mechanic-
al College in connection with a local board of
managers composed of five members to be appointed

by the Governor by and with the advice and consent of the Senate, who shall serve for two years from the date of their appointment."

"Sec. 6. That the board of managers shall have and possess all powers necessary subject to the supervision of the board of directors of the Agricultural and Mechanical College of Texas as to accomplish and carry out the provisions of this Act the establishment of a Junior Agricultural, Mechanical and Industrial College for the education of white boys and girls in this State in the arts and sciences in which such boys and girls may acquire a good literary education of academic grade, at least, together with a knowledge of agriculture, horticulture, floriculture, stock raising and domestic arts and sciences, including the several branches and studies usually taught in the established institutions of like character with such limitations as may be imposed by the governing board of the Agricultural and Mechanical College of Texas, having in view the training of the youth for the more important industrial activities of life, while acquiring facilities for the acquirement of a good practical literary education not below the academic grade.

"Sec. 7. That the board of managers in connection with the board of directors of the Agricultural and Mechanical College of Texas, shall appoint a president and professors of the Grubbs Vocational College and such officers as they may think proper and necessary to put the same into successful operation and to make such rules and regulations for the government of said officers and the proper management of said institution as they may deem advisable. They shall regulate rates of tuition with the course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall in connection with the faculty divide the courses of instruction into departments so as to secure a thorough education of the academic grade and the best possible industrial training, selecting careful and efficient professors in each department, giving preference to Texas teachers, if available, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institutions."

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The provisions of the 1917 Act were codified in the 1925 revision as Chapter 4 of Title 49 of the Revised Civil Statutes of Texas, 1925 (Articles 2620 et seq.). Article 2620, Revised Civil Statutes of Texas, 1925, read in part as follows:

"The North Texas Junior Agricultural, Mechanical and Industrial College at Arlington shall be under the direction of the board of directors of the Agricultural and Mechanical College designated herein the supervisory board in connection with a local board of managers composed of five members to be appointed by the Governor, subject to the approval of said supervisory board, by and with the advice and consent of the Senate, who shall serve for two years from the date of their appointment. Said local board shall perform all the duties required in the management of said College in like manner as governing boards of the same character. Said local board shall meet at Arlington as soon after their appointment as convenient and organize by the election of a presiding officer, a secretary and a treasurer. The supervisory board shall determine the compensation to be paid said local board."

The 1925 codification changed the name of the College to North Texas Junior Agricultural, Mechanical and Industrial College at Arlington. Article 2620 of the Revised Civil Statutes of Texas, 1925, was amended by Chapter 459, Acts of the 51st Legislature, Regular Session, 1949, changing the name of the North Texas Junior Agricultural, Mechanical and Industrial College at Arlington to Arlington State College. Section 2 of Article 2620, as thus amended, reads as follows (compiled in Vernon's as Article 2620a):

"The dual system of Governing Boards for said institution, comprising a supervisory board and a board of local managers, heretofore established by law, is abolished. The said Arlington State College shall be under the direction of the Board of Directors of the Agricultural and Mechanical College of Texas and said Board shall perform all the duties required in the management of said College in like manner as Governing Boards of the same character. The duties, rights and powers imposed and conferred by law on the former Boards are transferred to the said Board of Directors of the Agricultural and Mechanical College; provided that it shall be the duty of said Board to operate, manage and

direct said Arlington State College in accordance with the laws of this state and in keeping with the objectives established by the Legislature for said institution."

Thus the control and administration of Arlington State College, from the Board of Managers, created by the 1917 Act, was transferred to the Board of Directors of the Agricultural and Mechanical College (now the Texas A&M University System).

A study of the foregoing statutory provisions reveals that the institution of higher learning known as Arlington State College has been from its inception, and remains, an institution of higher learning created and operated pursuant to legislative acts, rather than constitutional provisions.

Likewise, the power of the governing board of the Texas A&M University System to control and administer institutions of higher learning comprising the System is derived from legislative acts rather than constitutional provisions. Heaton v. Bristol, 317 S.W. 2d 86 (Tex.Civ.App. 1958, error ref., cert.den., appeal dism., 79 S.Ct. 802, 359 U.S. 230, reh.den., 79 S.Ct. 1123, 359 U.S. 999). After reviewing the statutory powers of the Board of Directors of Texas A&M University and the powers of the Board of Regents of The University of Texas, the Court, in Heaton v. Bristol, construed the provisions of Section 13 of Article VII of the Constitution of Texas, declaring the Agricultural and Mechanical College of Texas "a branch of the University of Texas," as follows:

" . . . Moreover, we think the purpose of the framers of the Constitution in declaring in Sec. 13 of Art. VII that the College is 'a Branch of the University of Texas' was to enable the College to share in the land provided for the University in the constitution. It was not the purpose of the Legislature to make the College an integral part of the University so as to disable the Legislature from enacting, in its wisdom, appropriate laws for the independent governing, control and administration of such College, or with any other design than to enable it to share in the land endowment provided for the University by the constitution. The statutes thereafter enacted by the Legislature support this view. Assuming, without deciding, that the provisions of the Constitution made the College an integral part of the University for all purposes, certainly the Legislature would still have full power and authority to make such laws as

it thought necessary for the independent government, control and administration of such College, and through such laws would have the power to leave the regulation of the government, control, administration and management to the Board of Directors. . . ." (Emphasis added). 317 S.W.2d 86, 100.

It is our opinion that the provisions of Section 18 of Article VII of the Constitution of Texas, designating Arlington State College at Arlington an institution of higher learning authorized to participate in the building fund created by the provisions of Section 18 of Article VII, should be construed in the same manner as the provisions of Section 13 of Article VII were construed in Heaton v. Bristol, supra. It was not the purpose of Section 18 of Article VII to "disable the Legislature from enacting, in its wisdom, appropriate laws for the independent governing, control and administration" of institutions of higher learning named therein. In this connection, it was further pointed out in Heaton v. Bristol, supra:

"The Texas system of higher education, as it exists today, is comprised of 18 institutions fully supported by State funds. Each of these institutions, with the exception of A. & M. and Texas Women's University, is open to both sexes and has remained open to qualified members of each sex since the date of founding. A. & M. is only one part of the whole system, just as Texas Women's University is just a single part of the same system, along with the University of Texas and the other State colleges. No single college or university was established to serve the full and varied academic needs of the State, but the system, which includes each individual institution, fulfilling the respective objects of its creation, has been established to meet and fill the total and diverse educational needs of the State. . . . The Legislature in its wisdom has seen fit to afford to the individual the widest possible choice in the selection of a college or university. . . ." 317 S.W.2d 86, 98.

Since Arlington State College was created by statute and operated pursuant to statutory provision, rather than any constitutional provision, and since the Board of Directors of Texas A&M University System derives its powers from acts of the Legislature, you are advised that the control and administration of Arlington State College may be transferred from the Texas A&M

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University System to The University of Texas System by legislative act.

Participation in the building fund created by Section 18 of Article VII by Arlington State College cannot be changed by legislative act. Any expenditure of monies derived pursuant to Section 18 of Article VII for constructing, equipping or acquiring buildings or other permanent improvements for Arlington State College must be by the Board of Directors of Texas A&M University rather than by the Board of Regents of The University of Texas System and this requirement cannot be transferred by legislative act but can be accomplished only by a constitutional amendment.

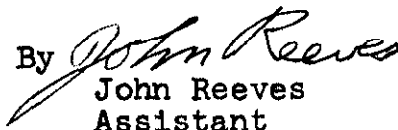
SUMMARY

The control and administration of Arlington State College may be transferred from the Texas A&M University System to The University of Texas System by legislative act.

Participation in the building fund created by Section 18 of Article VII of the Texas Constitution by Arlington State College cannot be changed by legislative act. Any expenditure of monies derived pursuant to Section 18 of Article VII for constructing, equipping or acquiring buildings or other permanent improvements for Arlington State College must be by the Board of Directors of Texas A&M University rather than by the Board of Regents of The University of Texas System and this requirement cannot be transferred by legislative act but can be accomplished only by a constitutional amendment.

Yours very truly,

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By 
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JR:ms

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APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
By: Stanton Stone